

REMARKS

In the Office Action of December 17, 2003, claims 15-21 and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rudnick, et al. (U.S. Patent No. 6,039,183).

Claims 1-23, 25 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross, et al. (U.S. Patent No. 5,318,543) in view of Rudnick, et al.

Claims 1-23, 25 and 26 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/085,417; claims 1-21 of copending Application No. 10/085,630; and claims 1-21 of copending Application No. 10/085,639.

Claim 24 was objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten in independent form to include all of the limitations of the base claim. In the present amendment, Applicants have amended claim 24 so that claim 24 is an independent claim that incorporates the subject matter of originally filed claim 15. As such, Applicants respectfully submit that claim 24 is in condition for allowance.

Applicants respectfully submit that claim 1 defines over the combination of Ross, et al. and Rudnick, et al. Respectfully, the combination does not render obvious a surgical kit that has a substantially rigid accessory item container that is configured for holding objects only inside of the container before being opened by a user. Support for this claim amendment may be found in at least Figures 6 and 7 of the drawings that show the container 24 configured to hold objects only on the inside.

The Office Action of December 17, 2003 states that Ross, et al. does not disclose a substantially rigid container (see paragraph 4 on page 3 of the Office Action of December 17, 2003). Rudnick, et al. discloses a blister package assembly 20 that is configured for holding an aortic arch graft 10. Rudnick, et al. provides for a blister insert 24 that is positioned on a blister tray 22 (see Rudnick, et al. at column 4, lines 4-10). An outer surface of the blister insert 24 has a reverse blister depression 48 formed on one end (see Rudnick, et al. at column 3, lines 44-47; and column 4, lines 25-33). A lateral branch 16 of the aortic arch graft 10 is positioned and held in the reverse blister depression 48 in order to space and separate the lateral branch 16 from the aligned branches 14 of the aortic arch graft 10 (see Rudnick, et al. at column 4, lines 28-33). Nowhere does Rudnick, et al. disclose the holding of objects inside of the blister insert 24. In fact, Rudnick, et al. specifically teaches the exact opposite configuration in providing a reverse blister depression 48 on the outer surface of the blister insert 24 in order to hold an object thereon. It would not have been obvious for one skilled in the art to modify the blister insert 24 such that the lateral branch 16 is held inside the blister insert 24 because the lateral branch 16 forms a part of the aortic arch graft 10 and is in fact integrally formed therewith.

In stark contrast, the container of claim 1 of Applicants' application is configured for holding objects only inside of the container before being opened by a user. This container is opposite from the container of Rudnick, et al. which instead discloses a blister insert 24 that is configured for holding objects on the surface of the blister insert 24. It would not have been obvious for one skilled in the art to reconfigure the blister insert 24 of Rudnick, et al. to arrive at the container set forth in claim 1 of Applicants'

application for the reasons set forth above. As such, Applicants respectfully submit that claim 1 defines over the combination of Ross, et al. and Rudnick, et al. and is in condition for allowance. Further, all claims that depend from claim 1 (claims 2-14) are also in condition for allowance. Their rejections being made moot due to the allowance of claim 1.

Applicants also submit that claim 15 defines over both Rudnick, et al. and the combination of Ross, et al. and Rudnick, et al. Specifically, the references do not disclose a percutaneous endoscopic gastrostomy (PEG) kit that has a container that stores accessory items including at least a drape. Support for this claim amendment may be found on at least page 3, lines 4-8 of Applicants' application.

As previously mentioned, Rudnick, et al. discloses a blister package 20 that is configured for holding an aortic arch graft 10. The blister insert 24 holds a lateral branch 16 of the aortic arch graft 10 in a reverse blister depression 48 on the outside surface of the blister insert 24 (see Rudnick, et al. at column 4, lines 25-33; and Figure 2). Nowhere does Rudnick, et al. disclose a container that stores accessory items that include at least a drape.

Ross, et al. discloses a laparoscopic jejunostomy instrumentation kit 10 that may include a drape (see Ross, et al. at column 2, lines 18-20 and 40-43). However, the drape along with optional additional kit components such as swabs, gauze squares 21 and so forth are placed in a first recess in the tray 13 (see Ross, et al. at column 2, lines 38-43). The first recess also contains an external retaining device 25, a packet of water-soluble lubricant 22, a nasogastric tube 14 and a jejunostomy tube 24 (see Figure 3 of Ross, et al.; and column 2, lines 33-38).

Ross, et al. therefore discloses a conventional kit in which accessory items such as drapes are simply placed loosely in the kit or alternatively provided in a sealed pouch (see page 1, lines 18-23 of Applicants' application). Claim 15 calls for an improvement upon conventional kits where the accessory items, that include at least a drape, is stored in a container that is adapted to fit at least partially within the tray. As previously mentioned, Rudnick, et al. does not disclose a drape, and Ross, et al. discloses a drape that is simply placed within a recess in the tray 13 and not in a container. Ross, et al. therefore teaches conventional placement of the drape within the kit 10. It would not have been obvious for one skilled in the art to modify Ross, et al. so that the drape was placed into a container because Ross, et al. is specifically directed towards a kit that reduces the amount of packaging of each item in the kit (see Ross, et al. at column 1, lines 42-45 and 56-59).

Therefore, Applicants respectfully submit that claim 15 defines over Rudnick, et al. and the combination of Ross, et al. in view of Rudnick, et al. and is in condition for allowance. Further, all claims that depend from claim 15 (claims 16-23, 25 and 26) are also in condition for allowance. Their rejections being made moot due to the allowance of claim 15.

A properly executed Terminal Disclaimer is being filed herewith to overcome the double patenting rejections noted in paragraphs 5 and 6 of the Office Action of December 17, 2003. It is to be understood that the Terminal Disclaimer is being submitted merely to expedite prosecution of the present application, and in no way should be taken as acquiescence in the Office Action's position that a Terminal Disclaimer is required, or that the claims of the present application are obvious in view

of the copending related applications alone or in combination with any other reference.

Applicants respectfully submit that all claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at the Examiner's convenience should the Examiner have any questions regarding this matter or require any additional information.

Respectfully submitted,

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